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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/607,571	06/26/2003	Richard P. Batycky	2685.2046 US3	6287

38421 7590 08/25/2008  
ELMORE PATENT LAW GROUP, PC  
515 Groton Road  
Unit 1R  
Westford, MA 01886

EXAMINER
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ALSTRUM ACEVEDO, JAMES HENRY

ART UNIT	PAPER NUMBER
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1616

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08/25/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.



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**AUG 25 2008**

ELMORE PATENT LAW GROUP, PC  
515 Groton Road  
Unit 1R  
Westford MA 01886

In re Application of: :  
Batycky et al. :  
Serial No.: 10/607,571 : PETITION DECISION  
Filed: June 26, 2003 :  
Attorney Docket No.: 2685.2046 US3 :

This is in response to the petition under 37 CFR § 1.181, filed May 2, 2008, requesting that the finality of the Office action of March 5, 2008 be withdrawn.

## BACKGROUND

Most recently, the examiner mailed a final Office action on March 5, 2008 setting a three month statutory limit for reply. At the time of this 'final' Office action, claims 140-144, 146-150, 153, and 156-173 were pending in the application. The examiner rejected the claims under 35 U.S.C. 112, second paragraph, under 35 U.S.C. 103 (a), and double patenting.

In response thereto, applicants filed this petition under 37 CFR § 1.181 on May 2, 2008, requesting that the finality of the Office action of March 5, 2008 be withdrawn.

## DISCUSSION

The petition and the file history have been carefully considered.

In the petition filed on May 2, 2008, applicants argue that the Office action of March 5, 2008 raises new grounds of rejection that were neither necessitated by applicants' amendment of the claims, nor based on information submitted in an information disclosure statement. Specifically, applicants point out that the new grounds are rejections under 35 USC 112, second paragraph,

not cited in any of the previous Office actions. Applicants further point out that the claims were not amended in response to the previous non-final Office action.

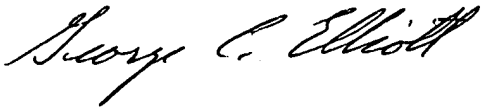
It is pointed out that the examiner did not recite the "This action is Final" summary in the "Conclusion" section of his Office action of March 5, 2008 on page 28. Thus, it is believed that the box (2a) marked Final on the Office Action Summary form appears to be an 'inadvertent error' on the part of the examiner. In any event, applicants' arguments are found persuasive that the final Office action issued June 20, 2008 was premature and, therefore, finality of the Office action will be withdrawn.

## DECISION

The petition is **GRANTED**.

This application will be forwarded to the examiner for an action not inconsistent with this decision, i.e. remailing of the Office action with the proper Status non-final box (2b) checked on the Office Action Summary Form.

Should there be any questions about this decision please contact Marianne C. Seidel, by letter addressed to Director, TC 1600, at the address listed above, or by telephone at 571-272-0584 or by facsimile sent to the general Office facsimile number, 703-872-9306.



George Elliott  
Director, Technology Center 1600